

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

BENJAMIN ASHENBURG,)
)
Plaintiff,)
)
v.)
)
CITY OF SOUTH BEND: MARTIN)
MULLINS and MICHAEL STUK,)
Individually and in their official capacity)
As South Bend police officers; ALVIN)
TAYLOR, KAYLA DAWSON,)
HARRISON RICH and JEREMY REED)
Individually and in their official capacity)
And Indiana State Excise Police officers)
)
Defendants.)

Case No. 3:12-CV-427

**MOTION TO DISMISS PLAINTIFF'S FEDERAL BASED CLAIMS AGAINST
DEFENDANT CITY OF SOUTH BEND PURSUANT TO 12(B)(6)**

Comes now the Defendant, City of South Bend and moves to dismiss the Plaintiff's Section 1983 action against it and in support states the following:

1. To prevail in a claim that a municipality violated a Plaintiff's rights pursuant to Section 1983, the Plaintiff must allege some factual content that allows a Court to draw a reasonable inference that it maintained a policy, custom or practice.
2. The United States Supreme Court and the Seventh Circuit Court of Appeals requires a Plaintiff to provide specific facts to support the legal claims asserted in the Plaintiff's complaint.
3. The Plaintiff in paragraph 4 of his Complaint makes a legal conclusion that its officers acted in accordance with "City policy".

4. The Plaintiff asserts no factual content that supports his theory.

5. Since the Plaintiff has failed to assert any factual support for his claim against the City of South Bend he has failed to state a claim in which relief can be granted.

WHEREFORE, the Defendant City of South Bend moves to dismiss the Plaintiff's Federal based claim pursuant to F. R. Civ. P. 12(b)(6).

Respectfully submitted,

s/Jeffrey L. Sanford
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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF Filing System which sent notification of such filing to the following: Ivan E. Bodensteiner, 7 Napoleon Street, Valparaiso, IN 46383.

s/Jeffrey L. Sanford
Jeffrey L. Sanford